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OFFICE OF THE FEDERAL COORDINATOR FOR ALASKA NATURAL GAS TRANSPORTATION PROJECTS

Review of Federal Permit Conditions

AGENCY: Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects

ACTION: Notice and request for public comment

SUMMARY: The Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects is proposing to implement its statutory responsibilities under the Alaska Natural Gas Pipeline Act (15 U.S.C. 720) with respect to federal permit conditions imposed on the gas pipeline project. This policy statement will establish the agency's procedures for determining whether certain conditions included in a certificate, right-of-way, permit, lease, or other authorization for an Alaska natural gas transportation project by other federal agencies are prohibited under the Alaska Natural Gas Pipeline Act.

DATES: Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] ADDRESSES: Address all comments concerning this notice to Frank Richards, Deputy Federal Coordinator, Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects; 188 W. Northern Lights Blvd., Suite 600; Anchorage, AK 99503. Submit electronic comments to: frichards@arcticgas.gov.

FOR FURTHER INFORMATION CONTACT: Frank Richards, Deputy Federal Coordinator,
Alaska Natural Gas Transportation Projects, 907-271-5240.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND: Congress enacted the Alaska Natural Gas Pipeline Act in 2004 (15 U.S.C. 720) to encourage completion of a pipeline to deliver natural gas from Alaska's North Slope to the Lower 48 states. The Alaska Natural Gas Pipeline Act establishes a new process for approval and construction of the pipeline, either a project that completes the Alaska Natural Gas Transportation System that President Carter approved in 1977 pursuant to the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719), or a different pipeline project under the Natural Gas Act. The Alaska Natural Gas Pipeline Act of 2004 created the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects and charged the Federal Coordinator, the agency head, with four primary responsibilities: (1) Coordinate the expeditious discharge of all activities by all federal agencies with respect to an Alaska natural gas pipeline; (2) Ensure that all federal agencies comply with the Alaska Natural Gas Pipeline Act; (3) Prohibit federal agencies from imposing permit conditions that would prevent or impair in any significant respect the expeditious construction and operation of the project unless the conditions are required by law. The act directs the Federal Coordinator to determine whether a term or condition would prevent or impair in any significant respect the expeditious construction and operation of the project; and (4) Participate with the state of Alaska in a joint construction surveillance and monitoring agreement.

In addition, Congress transferred to the Federal Coordinator all of the responsibilities and authorities of the Federal Inspector under the Alaska Natural Gas Transportation Act of 1976. These responsibilities will be

applicable if the Alaska Natural Gas Transportation System gas line is completed or if the 1980's prebuilt sections of that project are expanded or modified within the United States to handle Alaska gas.

This policy addresses the third of the four statutory requirements listed above by explaining how the Federal Coordinator will determine whether conditions that federal agencies intend to impose on permits, rights-of-way or other authorizations for an Alaska gas transportation project will prevent or impair in any significant respect the expeditious construction and operation of the project.

Several sections of the Alaska Natural Gas Pipeline Act require the Federal Coordinator to consider permit conditions imposed by federal agencies with respect to the pipeline. Section 106(d)(2), Pub. L. 108-324, 118 Stat. 1255 prohibits agencies from including certain conditions in permits and other approvals, it states:

2) PROHIBITION OF CERTAIN TERMS AND CONDITIONS - No Federal agency may include in any certificate, right-of-way, permit, lease, or other authorization issued to an Alaska natural gas transportation project any term or condition that may be permitted, but is not required, by any applicable law if the Federal Coordinator determines that the term or condition would prevent or impair in any significant respect the expeditious construction and operation, or an expansion, of the Alaska natural gas transportation project.

Thus, the Alaska Natural Gas Pipeline Act of 2004 prohibits conditions that may be included but are not required by any applicable law if the Federal

Coordinator determines that the condition would prevent or impair in any significant respect the expeditious construction and operation, or an expansion, of the Alaska natural gas transportation project. The Federal Coordinator's function with regard to some conditions is limited. Under the Alaska Natural Gas Pipeline Act, Division C, Section 106(d)(4), Pub. L. 108-324 denies the Federal Coordinator any authority to override the Federal Energy Regulatory Commission's implementation of open seasons for the project or the Commission's orders for expansion of the project under Section 105 of the Alaska Natural Gas Pipeline Act, or to add or impose any terms or conditions to the Federal Energy Regulatory Commission certificate or any agency's permit or other authorization for the project. Division C, Section 106(d)(4), Pub. L. 108-324 states:

(4) LIMITATION- The Federal Coordinator shall not have authority to--

(A) override--

(i) the implementation or enforcement of regulations issued by the Commission under section 103; or

(ii) an order by the Commission to expand the project under section 105; or

(B) impose any terms, conditions, or requirements in addition to those imposed by the Commission or any agency with respect to construction and operation, or an expansion of, the project.

The Alaska Natural Gas Pipeline Act also prohibits federal agencies from amending any previously issued permit or authorization to add conditions determined by the Federal Coordinator to prevent or impair in any significant respect the expeditious construction and operation of the pipeline.

(3) PROHIBITION OF CERTAIN ACTIONS - Unless required by law, no Federal agency shall add to, amend, or abrogate any certificate, right-of-way, permit, lease, or other authorization issued to an Alaska natural gas transportation project if the Federal Coordinator determines that the action would prevent or impair in any significant respect the expeditious construction and operation, Or an expansion, of the Alaska natural gas transportation project. ANGPA §106(d)(3).

The prohibition of permit conditions which would prevent or impair in any significant respect expeditious construction and operation does not apply to conditions adopted by state agencies, even those issued pursuant to programs encouraged or funded by the federal government. However, if a state-issued permit includes a condition which is incorporated into a federal permit by a federal agency, the Federal Coordinator may review the condition that the federal agency adopted. Any determination the Federal Coordinator makes would not affect the state condition, just the applicability of the federal permit condition.

II. DISCUSSION OF PROPOSED POLICY:

The Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects proposes to implement provisions of the Alaska Natural Gas Transportation Act of 2004 by policy, which will establish the process by which the Federal Coordinator will exercise its responsibility to determine whether permit conditions would interfere with completion of the project. This policy will apply to the agency's review of conditions initially included in a permit or authorization for an Alaska natural gas transportation project, as well as any renewal or reissuance of permits or other authorizations.

A. INTENTION TO WORK WITH OTHER AGENCIES:

It is the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects' intention to work closely with other federal agencies before, during and after the National Environmental Policy Act process and during the permit application review process of each agency in order to identify the likely need for permit conditions early and to determine as soon as possible whether a particular permit condition would be inconsistent with the Alaska Natural Gas Pipeline Act's statutory prohibition. The Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects expects that through coordination with other federal agencies and the permit applicant, it should be able to resolve concerns about most terms and conditions early on and either avoid a formal review process or conclude it expeditiously.

B. DEFINITIONS:

(1) CONDITION: The agency proposes to define term or condition of the Alaska Natural Gas Pipeline Act, Section 106(d) (2), Pub. L. 108-324, 118 Stat. 1255 – referred to in this policy as condition – to mean any obligation not proposed by the applicant but proposed to be added to the permit or authorization by a federal agency. That includes all terms, stipulations or conditions required by the agency and any other requirement imposed by a federal agency. It excludes any obligation included by the applicant in its application, even if the obligation is suggested by an agency.

(2) CERTIFICATE , RIGHT-OF-WAY, PERMIT, LEASE, OR OTHER AUTHORIZATION: The agency proposes to define certificate, right-of-way, permit, lease or other authorization to mean any certificate, right-of-way, permit, lease, approval or other authorization required in order to construct or operate an Alaska natural gas transportation project, but excludes permissions for useful, but not required authorizations. Accordingly, federal loan guarantees, licenses for

communications equipment not necessary for the project and other such permissions would not be subject to OFC review.

(3) ALASKA NATURAL GAS TRANSPORTATION PROJECT: The agency does not intend to propose a definition of Alaska natural gas transportation project, as that term is defined in the Alaska Natural Gas Pipeline Act in Section 102 of Pub. L. 108-324, 118 Stat. 1255. It is important to note that the definition includes the entire system, not simply the pipeline. Therefore, this permit review policy will cover conditions addressing support facilities, compressor stations, the gas treatment plant, and other parts of the project.

(4) PREVENT OR IMPAIR IN ANY SIGNIFICANT RESPECT THE EXPEDITIOUS CONSTRUCTION AND OPERATION OF THE PROJECT: The agency does not intend to define prevent or impair in any significant respect the expeditious construction and operation of the project because the agency believes this should be interpreted based on the circumstances of the project at the time of an agency's action, the agency's intention and justification in crafting the proposed condition, and the condition's effect on the project. Prevent or impair in any significant respect cannot be well-defined in the absence of specific circumstances. As an example, a condition that causes a significant delay in the first in-service date contractually agreed to between the pipeline owner and/or operator and a shipper could, if extreme, be deemed to impair expeditious construction and operation of the project. However, such a determination could only be made if the contractual in-service date were reasonable in light of the complexity of the project and other circumstances.

C. PROCESS FOR REVIEW OF PERMIT CONDITIONS:

The Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects does not intend to review every condition on every permit. Rather, the

agency will review permit conditions at the request of the applicant or permittee. In addition, agency reserves the right to select conditions for review on its own initiative. When the permitting agency's practice or regulations allow that agency or the Office of the Federal Coordinator to share a draft permit condition with an applicant, the Office of the Federal Coordinator will work with the applicant and the agency as early as possible to identify problematic permit conditions. An applicant may request review of a permit condition by the Office of the Federal Coordinator prior to issuance if the applicant believes it may prevent or impair in any significant respect the expeditious construction and operation of the project.

If the practice of the permitting agency does not allow draft permit conditions to be shared with an applicant, the permittee will have to wait to request review of a permit condition until after the permit is issued.

Requests from the applicant or the permittee for review of permit conditions should specify what specific condition will prevent or impair expeditious construction and operation of the project and should explain why the condition will have a detrimental impact on the project.

D. INFORMATION REQUIRED FOR REVIEW:

The Office of the Federal Coordinator will need background information from the agency in order to conduct its review, including:

- (1) The language of the specific condition.

(2) A citation to the legal requirement for the condition.

(3) Any analysis the agency has prepared of the cost of implementing the condition.

(4) Any other information that explains the agency's reasons to include the condition, especially the circumstances that require its inclusion. This should include any discussion of the benefits of the conditions, or a cost-benefit analysis if one has been prepared.

(5) If the permit has not been issued, a statement addressing whether it is permissible under the agency's practice to share the draft condition with the applicant.

The Office of the Federal Coordinator expects this information should be readily available from the agency and will not impose a burden on the agency, as it should have already documented the need for the condition as part of the administrative record. Accordingly, the Office of the Federal Coordinator anticipates that the agency will be able to provide this information within ten (10) calendar days of Office of the Federal Coordinator's notification of a review and request for additional information.

Based on Office of the Federal Coordinator's review of the proposed condition, the Federal Coordinator will determine whether the condition would prevent or impair in any significant respect the expeditious construction and operation of the project. In most cases, the Office of the Federal Coordinator's review should be completed in less than thirty (30) days after a project applicant

requests a review. The Federal Coordinator will provide notice of its decision and reasoning to the applicant and the agency. If the Federal Coordinator determines that the condition or proposed condition would prevent or impair in any significant respect the expeditious construction and operation of the project, the Office of the Federal Coordinator will facilitate a meeting between the permittee or applicant and the issuing agency and, if appropriate, other experts, in order to help resolve the issue.

III. PROPOSED POLICY FOR REVIEW OF FEDERAL PERMIT CONDITIONS FOR AN ALASKA NATURAL GAS PIPELINE PROJECT

The purpose of this policy is to explain how the Office of the Federal Coordinator (OFC) will exercise its responsibilities with respect to review of permit conditions under Section 106(d) of the Alaska Natural Gas Pipeline Act (ANGPA). This policy applies to the issuance of initial permits, as well as the renewal or reissuance of permits for an Alaska natural gas transportation project.

It is the OFC's intention to work closely with other federal agencies before, during and after the National Environmental Policy Act process and during the permit application review process of each agency in order to identify the likely need for permit conditions early and to determine as soon as possible whether a particular permit condition would be precluded by ANGPA's statutory prohibition. The OFC expects that through coordination with other federal agencies and the permit applicant, it should be able to resolve concerns about most terms and conditions early on and either avoid a formal review process or conclude it expeditiously.

1. Definitions:

(a) Term or condition in Section 106(d)(2) of ANGPA – referred to in this policy as condition – means any obligation not proposed by the applicant but proposed to be added to the permit or authorization by a federal agency. This includes all terms, stipulations, conditions or additions to the application and any other requirement imposed by an agency. It excludes any obligation included by the applicant in its application, even if the obligation is suggested by an agency.

(b) Certificate, right-of-way, permit, lease or other authorization means any certificate, right-of-way, permit, lease, approval or other authorization required in order to construct or operate an Alaska natural gas transportation project.

2. Review of Proposed Terms or Conditions

(a) Review of permit conditions by request of applicant

(1) An applicant for a permit or a permittee for any permit, certificate, right-of-way or other authorization for an Alaska natural gas transportation project may request the Federal Coordinator to review any condition included in or proposed for inclusion in a permit, certificate, right-of-way or other authorization.

(2) Such requests must be made to the Federal Coordinator no later than 30 days after permit issuance.

(3) The request shall include a specific identification of each condition which the applicant or permittee believes is inconsistent with ANGPA and an explanation of the basis of that belief, including information that supports the contention that the permit condition would prevent or impair in any significant respect the expeditious construction and operation of the project.

(4) The Federal Coordinator may review a permit condition even if the permittee has not requested review.

(b) Materials necessary for review

If the Federal Coordinator receives a request for review of any condition, the OFC will notify the issuing agency of the request. The OFC will need the following information from the agency:

(1) The language of the specific condition.

(2) A citation to the legal requirement for the condition.

(3) Any analysis the agency has prepared of the cost of implementing the condition.

(4) Any other information that explains the agency's reasons to include the condition, especially the circumstances that require its inclusion. This should include any discussion of the benefits of the conditions, or a cost-benefit analysis if one has been prepared.

(5) If the permit has not yet been issued, a statement addressing whether agency practice or regulations would allow OFC to discuss the proposed condition with the applicant.

(c) Permit condition review

In determining whether a proposed permit condition would prevent or impair expeditious construction and operation of the project, the OFC will consider:

(1) Any delays in project construction and operation caused by the condition.

(2) All other available information, including, if available, the project's cost of meeting the condition.

(3) The statutory and regulatory basis for the condition, as provided by the issuing agency.

(4) The views of the applicant.

(d) The OFC will endeavor to complete its review within 30 days after a request from an applicant or permittee.

(e) The Federal Coordinator's decision

(1) The Federal Coordinator will determine whether the proposed condition would prevent or impair in any significant respect the expeditious construction and operation of an Alaska natural gas transportation project or expansion of that project. The Federal Coordinator's decision will be sent to the agency and the applicant or permittee.

(2) If the Federal Coordinator determines that the condition or proposed condition would prevent or impair in any significant respect the expeditious construction and operation of the project, the OFC will facilitate a meeting between the permittee or applicant and the issuing agency and, if appropriate, other experts, in order to help resolve the issue.

Dated: March 9, 2012

Larry Persily
Federal Coordinator

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